

1 Harry P. Weitzel, Esq. (Cal Bar No. 149934)
2 **PEPPER HAMILTON LLP**
3 4 Park Plaza, Suite 1200
4 Irvine, California 92614
5 Telephone: 949.567.3500
6 Fax: 949.863.0151
7 weitzelh@pepperlaw.com

8 M. Kelly Tillery (Admitted *Pro Hac Vice*)
9 Erik N. Videlock (Admitted *Pro Hac Vice*)
10 Christopher D. Olszyk (Admitted *Pro Hac Vice*)
11 **PEPPER HAMILTON LLP**
12 3000 Two Logan Square
13 Eighteenth and Arch Streets
14 Philadelphia, PA 19103-2799
15 Telephone: 215.981.4000
16 Fax: 215.981.4750
17 tillerk@pepperlaw.com
18 videlocke@pepperlaw.com
19 olszykc@pepperlaw.com.

20
21 *Counsel for Defendant Jay Quiang Huang and*
22 *Defendant/Counterclaim Plaintiff Saint-Gobain*
23 *Performance Plastics Corporation*

24 UNITED STATES DISTRICT COURT
25 SOUTHERN DISTRICT OF CALIFORNIA

26 BAL SEAL ENGINEERING
27 COMPANY, INC.,

28 Plaintiff/Counterclaim
Defendant,

v.

JAY QUIANG HUANG,

Defendant,

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION,

Defendant/Counterclaim
Plaintiff.

Case No. 10cv0819 IEG-CAB

Honorable: Irma E. Gonzalez

ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS OF
SAINT-GOBAIN
PERFORMANCE PLASTICS,
CORPORATION TO COUNTS
I THROUGH V OF FIRST
AMENDED COMPLAINT

1 For its Answer to the First Amended Complaint of Bal Seal Engineering
 2 Company, Inc. (the “Amended Complaint”), Defendant Saint-Gobain Performance
 3 Plastics Corporation (“SGPP”), by its attorneys, responds to the Amended
 4 Complaint, in accordance with its numbered paragraphs as follows:

5 1. Defendant SGPP lacks knowledge or information sufficient to form a
 6 belief as to the truth of the allegations in Paragraph 1, and they are therefore denied.

7 2. Defendant SGPP admits the allegations contained in Paragraph 2.

8 3. Defendant SGPP admits the allegations contained in Paragraph 3.

9 4. Defendant SGPP admits that Paragraph 4 sets forth multiple statutory
 10 bases for alleged subject matter jurisdiction. The allegations in Paragraph 4,
 11 however, constitute legal conclusions not requiring a response and they are
 12 therefore denied.

13 5. The allegations in Paragraph 5 constitute legal conclusions not requiring
 14 a response, and are therefore denied.

15 6. Defendant SGPP admits only that, on its face, U.S. Patent No. 5,082,390
 16 was issued by the USPTO to Peter J. Balsells on January 21, 1992. Defendant
 17 SGPP lacks knowledge or information sufficient to form a belief as to the truth of
 18 the remaining allegations in Paragraph 6, and they are therefore denied.

19 7. Defendant SGPP lacks knowledge or information sufficient to form a
 20 belief as to the truth of the allegations in Paragraph 7, and they are therefore denied.

21 8. The ‘390 Patent is a document, which speaks for itself, and any and all
 22 characterizations by Bal Seal of the ‘390 Patent are denied. To the extent the
 23 allegations in Paragraph 8 include claim constructions, these allegations constitute
 24 legal conclusions not requiring a response and they are therefore denied.

25 9. Defendant SGPP lacks knowledge or information sufficient to form a
 26 belief as to the truth of the allegations in Paragraph 9, and they are therefore denied.

27 10. Defendant SGPP denies all allegations in Paragraph 10.

1 11. Defendant SGPP admits only that, exclusive of the italics and bolding,
 2 the quoted language contained in Paragraph 11 accurately quotes what is stated in
 3 Exhibit E. Defendant SGPP denies that it encourages, suggests, and/or induces
 4 infringement of the '390 Patent, through the quoted language or otherwise.

5 12. Defendant SGPP admits only that the figures in paragraph 12 are
 6 facsimiles of Exhibit E. Defendant SGPP denies all other allegations.

7 13. Defendant SGPP admits only that, exclusive of the italics and bolding,
 8 the quoted language contained in Paragraph 13 accurately quotes what is stated in
 9 Exhibit E. Defendant SGPP denies the remaining allegations in Paragraph 13.

10 14. Defendant SGPP denies all allegations in Paragraph 14.

11 15. Defendant SGPP admits only to having two offices located through the
 12 United States, and manufacturing and selling springs and related products such as
 13 seals and connectors for use with springs, and providing those products to its
 14 customers. Defendant SGPP admits that the quoted language contained in
 15 Paragraph 15 accurately quotes what is stated in Exhibit E. Defendant SGPP denies
 16 the remaining allegations in Paragraph 15.

17 16. Defendant SGPP admits that it is aware of the '390 Patent. Defendant
 18 SGPP denies all other allegations in Paragraph 16.

19 17. Defendant SGPP admits only that, on its face, U.S. Patent No. 5,160,122
 20 was issued by the USPTO to Peter J. Balsells on November 3, 1992. Defendant
 21 SGPP lacks knowledge or information sufficient to form a belief as to the truth of
 22 the remaining allegations in Paragraph 17, and they are therefore denied.

23 18. Defendant SGPP lacks knowledge or information sufficient to form a
 24 belief as to the truth of the allegations in Paragraph 18, and they are therefore
 25 denied.

26 19. The '122 Patent is a document, which speaks for itself, and any and all
 27 characterizations by Bal Seal of the '122 Patent are denied. To the extent the
 28

1 allegations in Paragraph 19 include claim constructions, these allegations constitute
2 legal conclusions not requiring a response and they are therefore denied.

3 20. Defendant SGPP lacks knowledge or information sufficient to form a
4 belief as to the truth of the allegations in Paragraph 20, and they are therefore
5 denied.

6 21. Defendant SGPP denies all allegations in Paragraph 21.

7 22. Defendant SGPP admits only that, exclusive of the italics and bolding,
8 the quoted language contained in Paragraph 22 accurately quotes what is stated in
9 Exhibit F. Defendant SGPP denies that it encourages, suggests, and/or induces
10 infringement of the '122 Patent, through the quoted language or otherwise.

11 23. Defendant SGPP admits only that, exclusive of the italics and bolding,
12 the quoted language contained in Paragraph 23 accurately quotes what is stated in
13 Exhibit F. Defendant SGPP denies all other characterizations or allegations in
14 Paragraph 23.

15 24. Defendant SGPP denies all allegations in Paragraph 24.

16 25. Defendant SGPP admits only that the quoted language contained in
17 Paragraph 25 accurately quotes what is stated in Exhibit G. Defendant SGPP
18 denies all other allegations in Paragraph 25.

19 26. Defendant SGPP admits that the figures contained in Paragraph 26 are
20 facsimiles of Exhibits F and G. Defendant SGPP denies all other allegations in
21 Paragraph 26.

22 27. Defendant SGPP admits that the quoted language contained in
23 Paragraph 27 accurately quotes what is stated in Exhibit G. Defendant SGPP
24 denies all other allegations in Paragraph 27.

25 28. Defendant SGPP denies all allegations in Paragraph 28.

26 29. Defendant SGPP admits only to having two offices located through the
27 United States, and manufacturing and selling springs and related products such as
28

1 seals, gaskets, and connectors for use with springs, and providing those products to
2 its customers. Defendant SGPP admits that the quoted language contained in
3 Paragraph 29 accurately quotes what is stated in Exhibit F. Defendant SGPP denies
4 the remaining allegations in Paragraph 29.

5 30. Defendant SGPP admits that it is aware of the '122 Patent. Defendant
6 SGPP denies all other allegations in Paragraph 30.

7 31. Defendant SGPP admits only that, on its face, U.S. Patent No. 5,984,316
8 was issued by the USPTO to Peter J. Balsells on November 16, 1999. Defendant
9 SGPP lacks knowledge or information sufficient to form a belief as to the truth of
10 the remaining allegations in Paragraph 31, and they are therefore denied.

11 32. Defendant SGPP lacks knowledge or information sufficient to form a
12 belief as to the truth of the allegations in Paragraph 32, and they are therefore
13 denied.

14 33. The '316 Patent is a document, which speaks for itself, and any and all
15 characterizations by Bal Seal of the '316 Patent are denied. To the extent the
16 allegations in Paragraph 33 include claim constructions, these allegations constitute
17 legal conclusions not requiring a response and they are therefore denied.

18 34. Defendant SGPP lacks knowledge or information sufficient to form a
19 belief as to the truth of the allegations in Paragraph 34, and they are therefore
20 denied.

21 35. Defendant SGPP denies all allegations in Paragraph 35.

22 36. Defendant SGPP admits only that, exclusive of the italics and bolding,
23 the quoted language contained in Paragraph 36 accurately quotes what is stated in
24 Exhibit H. Defendant SGPP denies that it encourages, suggests, and/or induces
25 infringement of the '316 Patent, through the quoted language or otherwise.

1 37. Defendant SGPP admits that the figures contained in Paragraph 37 are
2 facsimiles of Exhibit H. Defendant SGPP denies all other allegations in Paragraph
3 37.

4 38. Defendant SGPP denies all allegations contained in Paragraph 38.

5 39. Defendant SGPP admits only to having two offices located through the
6 United States, and manufacturing and selling springs (including canted coil and u-
7 type springs) and related products such as seals, gaskets, and connectors that
8 incorporate the springs, and providing those products to its customers. Defendant
9 SGPP admits that the quoted language contained in Paragraph 39 accurately quotes
10 what is stated in Exhibit H. Defendant SGPP denies the remaining allegations in
11 Paragraph 39.

12 40. Defendant SGPP admits that it is aware of the '316 Patent. Defendant
13 SGPP denies all other allegations in Paragraph 40.

14 41. Defendant SGPP lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations in Paragraph 41, and they are therefore
16 denied.

17 42. The Secrecy Agreement is a document, which speaks for itself, and any
18 and all characterizations by Bal Seal of the Secrecy Agreement are denied. To the
19 extent the allegations in Paragraph 42 constitute legal conclusions, they do not
20 require a response and are therefore denied.

21 43. The Secrecy Agreement is a document, which speaks for itself, and any
22 and all characterizations by Bal Seal of the Secrecy Agreement are denied. To the
23 extent the allegations in Paragraph 43 constitute legal conclusions, they do not
24 require a response and are therefore denied.

25 44. The Secrecy Agreement is a document, which speaks for itself, and any
26 and all characterizations by Bal Seal of the Secrecy Agreement are denied. To the
27
28

1 extent the allegations in Paragraph 44 constitute legal conclusions, they do not
 2 require a response and are therefore denied.

3 45. Defendant SGPP lacks knowledge or information sufficient to form a
 4 belief as to the truth of the allegations in Paragraph 45, and they are therefore
 5 denied.

6 46. Defendant SGPP lacks knowledge or information sufficient to form a
 7 belief as to the truth of the allegations in Paragraph 46, and they are therefore
 8 denied.

9 47. Defendant SGPP lacks knowledge or information sufficient to form a
 10 belief as to the truth of the allegations in Paragraph 47, and they are therefore
 11 denied.

12 48. Defendant SGPP admits only that Jay Huang was and is an employee of
 13 SGPP since April 2008. Defendant SGPP lacks knowledge or information
 14 sufficient to form a belief as to the truth of the remaining allegations in Paragraph
 15 48, and they are therefore denied.

16 49. Defendant SGPP admits only that on September 18, 2008, it filed with
 17 the United States Patent and Trademark Office, Trademark Applications for the
 18 word-marks OMNISPRING and OMNISHIELD, both on an Intent to Use filing
 19 basis, and covering goods described as “metal hardware, namely springs; metal
 20 springs used as electrical connectors” and “metal springs with electrical properties
 21 used in the manufacture of electronic equipment for the military, commercial and
 22 consumer electrical and electronics industries, to prevent the passage of
 23 electromagnetic and radio frequency waves”, respectively.

24 50. Defendant SGPP denies the allegations set forth in Paragraph 50.

25 51. Defendant SGPP denies the allegations set forth in Paragraph 51.

26 52. Defendant SGPP denies the allegations set forth in Paragraph 52.

27 53. Defendant SGPP denies the allegations set forth in Paragraph 53.

1 54. Defendant SGPP admits only that in June and/or July 2009 counsel for
 2 Bal Seal contacted counsel for SGPP, alleging misappropriation of proprietary,
 3 confidential and trade secret information. Defendant SGPP denies all other
 4 allegations set forth in Paragraph 54.

5 55. Defendant SGPP denies the allegations in Paragraph 55. By way of
 6 further answer, SGPP states that at no time did it directly or indirectly issue RFQ's
 7 using Bal Seal's proprietary, confidential and trade secret information.

8 56. Defendant SGPP denies the allegations set forth in Paragraph 56.

9 57. Defendant SGPP denies the allegations set forth in Paragraph 57.

10 58. Defendant SGPP denies the allegations set forth in Paragraph 58.

11 59. Defendant SGPP denies the allegations set forth in Paragraph 59.

12 60. Defendant SGPP denies the allegations set forth in Paragraph 60

13 61. Defendant SGPP denies the allegations set forth in Paragraph 61.

14 62. Defendant SGPP denies the allegations set forth in Paragraph 62.

15 63. Defendant SGPP denies the allegations set forth in Paragraph 63.

16 64. Defendant SGPP lacks knowledge or information sufficient to form a
 17 belief as to the truth of the allegations in Paragraph 64, and they are therefore
 18 denied. Defendant SGPP expressly denies any wrongdoing.

19 65. Defendant SGPP denies the allegations set forth in Paragraph 65.

20 66. Defendant SGPP hereby incorporates by reference its answers to the
 21 allegations contained in paragraphs 1 through 65 of the Amended Complaint as if
 22 set forth fully herein.

23 67. The allegations in Paragraph 67 constitute legal conclusions not
 24 requiring a response and they are therefore denied. To the extent that Paragraph 67
 25 contains allegations of fact, those allegations are denied.

1 68. The allegations in Paragraph 68 constitute legal conclusions not
2 requiring a response and they are therefore denied. To the extent that Paragraph 68
3 contains allegations of fact, those allegations are denied.

4 69. The allegations in Paragraph 69 constitute legal conclusions not
5 requiring a response and they are therefore denied. To the extent that Paragraph 69
6 contains allegations of fact, those allegations are denied.

7 70. The allegations in Paragraph 70 constitute legal conclusions not
8 requiring a response and they are therefore denied. To the extent that Paragraph 70
9 contains allegations of fact, those allegations are denied.

10 71. Defendant SGPP admits that it is aware of the '390 Patent. The
11 remaining allegations of Paragraph 71 are denied.

12 72. The allegations in Paragraph 72 constitute legal conclusions not
13 requiring a response and they are therefore denied. To the extent that Paragraph 72
14 contains allegations of fact, those allegations are denied.

15 73. Defendant SGPP hereby incorporates by reference his answers to the
16 allegations contained in paragraphs 1 through 72 of the Amended Complaint as if
17 set forth fully herein.

18 74. The allegations in Paragraph 74 constitute legal conclusions not
19 requiring a response and they are therefore denied. To the extent that Paragraph 74
20 contains allegations of fact, those allegations are denied.

21 75. The allegations in Paragraph 75 constitute legal conclusions not
22 requiring a response and they are therefore denied. To the extent that Paragraph 75
23 contains allegations of fact, those allegations are denied.

24 76. The allegations in Paragraph 76 constitute legal conclusions not
25 requiring a response and they are therefore denied. To the extent that Paragraph 76
26 contains allegations of fact, those allegations are denied.

1 77. The allegations in Paragraph 77 constitute legal conclusions not
2 requiring a response and they are therefore denied. To the extent that Paragraph 77
3 contains allegations of fact, those allegations are denied.

4 78. Defendant SGPP admits that it is aware of the '122 Patent. The
5 remaining allegations of Paragraph 78 are denied.

6 79. The allegations in Paragraph 79 constitute legal conclusions not
7 requiring a response and they are therefore denied. To the extent that Paragraph 79
8 contains allegations of fact, those allegations are denied.

9 80. Defendant SGPP hereby incorporates by reference its answers to the
10 allegations contained in paragraphs 1 through 79 of the Amended Complaint as if
11 set forth fully herein.

12 81. The allegations in Paragraph 81 constitute legal conclusions not
13 requiring a response and they are therefore denied. To the extent that Paragraph 81
14 contains allegations of fact, those allegations are denied.

15 82. The allegations in Paragraph 82 constitute legal conclusions not
16 requiring a response and they are therefore denied. To the extent that Paragraph 82
17 contains allegations of fact, those allegations are denied.

18 83. The allegations in Paragraph 83, constitute legal conclusions not
19 requiring a response and they are therefore denied. To the extent that Paragraph 83
20 contains allegations of fact, those allegations are denied.

21 84. The allegations in Paragraph 84 constitute legal conclusions not
22 requiring a response and they are therefore denied. To the extent that Paragraph 84
23 contains allegations of fact, those allegations are denied.

24 85. Defendant SGPP admits that it is aware of the '316 Patent. The
25 remaining allegations of Paragraph 85 are denied.
26
27
28

1 86. The allegations in Paragraph 86 constitute legal conclusions not
2 requiring a response and they are therefore denied. To the extent that Paragraph 86
3 contains allegations of fact, those allegations are denied.

4 87. Defendant SGPP hereby incorporates by reference its answers to the
5 allegations contained in paragraphs 1 through 86 of the Amended Complaint as if
6 set forth fully herein.

7 88. Defendant SGPP denies the allegations in Paragraph 87 relating to an
8 alleged misappropriation of trade secrets. Defendant SGPP lacks knowledge or
9 information sufficient to form a belief as to the truth of the remaining allegations in
10 Paragraph 88, including whether any such trade secrets exists, and they are
11 therefore denied.

12 89. Defendant SGPP denies the allegations in Paragraph 88 relating to an
13 alleged misappropriation of trade secrets. Defendant SGPP lacks knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations in
15 Paragraph 89, including whether any such trade secrets exists, and they are
16 therefore denied.

17 90. Defendant SGPP lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations in Paragraph 90, and they are therefore
19 denied.

20 91. Defendant SGPP denies all allegations contained in Paragraph 91.

21 92. Defendant SGPP denies all allegations contained in Paragraph 92.

22 93. Defendant SGPP denies all allegations contained in Paragraph 93.

23 94. The allegations in Paragraph 94 constitute legal conclusions not
24 requiring a response and they are therefore denied. To the extent that Paragraph 94
25 contains allegations of fact, those allegations are denied.

1 95. The allegations in Paragraph 95 constitute legal conclusions not
2 requiring a response and they are therefore denied. To the extent that Paragraph 95
3 contains allegations of fact, those allegations are denied.

4 96. The allegations in Paragraph 96 constitute legal conclusions not
5 requiring a response and they are therefore denied. To the extent that Paragraph 96
6 contains allegations of fact, those allegations are denied.

7 97. Defendant SGPP hereby incorporates by reference his answers to the
8 allegations contained in paragraphs 1 through 96 of the Amended Complaint as if
9 set forth fully herein.

10 98. The allegations in Paragraph 98 constitute legal conclusions not
11 requiring a response and they are therefore denied. To the extent that Paragraph 98
12 contains allegations of fact, those allegations are denied.

13 99. The allegations in Paragraph 99 constitute legal conclusions not
14 requiring a response and they are therefore denied. To the extent that Paragraph 99
15 contains allegations of fact, those allegations are denied.

16 100. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
17 100 is required, and is therefore denied.

18 101. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
19 101 is required, and is therefore denied.

20 102. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
21 102 is required, and is therefore denied.

22 103. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
23 103 is required, and is therefore denied.

24 104. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
25 104 is required, and is therefore denied.

26 105. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
27 105 is required, and is therefore denied.

1 106. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
2 106 is required, and is therefore denied.

3 107. Defendant SGPP is not subject of Claim 6 and no response to Paragraph
4 107 is required, and is therefore denied.

5 108. Defendant SGPP hereby incorporates by reference its answers to the
6 allegations contained in paragraphs 1 through 107 the Amended Complaint as if set
7 forth fully herein.

8 109. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
9 109 is required, and is therefore denied.

10 110. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
11 110 is required, and is therefore denied.

12 111. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
13 111 is required, and is therefore denied.

14 112. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
15 112 is required, and is therefore denied.

16 113. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
17 113 is required, and is therefore denied.

18 114. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
19 114 is required, and is therefore denied.

20 115. Defendant SGPP is not subject of Claim 7 and no response to Paragraph
21 115 is required, and is therefore denied.

22

23

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's Amended Complaint fails to state a claim upon which relief can be
27 granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 Defendant SGPP does not, and did not directly, by inducement,
3 contributorily, or in any other manner, infringe any of the claims in Plaintiff's '390
4 Patent.

5 **THIRD AFFIRMATIVE DEFENSE**

6 Defendant SGPP does not, and did not directly, by inducement,
7 contributorily, or in any other manner, infringe any of the claims in Plaintiff's '122
8 Patent.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 Defendant SGPP does not, and did not directly, by inducement,
11 contributorily, or in any other manner, infringe any of the claims in Plaintiff's '316
12 Patent.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 The '390 Patent is invalid for failing to comply with the conditions and
15 requirements for patentability as set forth in the United States Patent Laws,
16 including 35 U.S.C. §§ 101, 102, 103, and 112.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 The '122 Patent is invalid for failing to comply with the conditions and
19 requirements for patentability as set forth in the United States Patent Laws,
20 including 35 U.S.C. §§ 101, 102, 103, and 112.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 The '316 Patent is invalid for failing to comply with the conditions and
23 requirements for patentability as set forth in the United States Patent Laws,
24 including 35 U.S.C. §§ 101, 102, 103, and 112.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Plaintiff's claims are Unenforceable and barred by the Doctrine of Laches.
27

1 **NINTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims are Unenforceable and barred by the Doctrine of Equitable
3 Estoppel.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are Unenforceable and barred by the Doctrine of
6 Acquiescence and Waiver.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are Unenforceable and barred by the applicable Statute of
9 Limitations.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Plaintiff is estopped from construing the claims of the '390, '122 and '360
12 Patents in such a way as to cover any of SGPP's products or actions, due to
13 statements made to the United States Patent and Trademark Office during
14 prosecution of the applications that led to the issuance of the 390, '122 and '360
15 Patent or at any other time.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred in whole or in part by the Unclean Hands
18 Doctrine, and because Plaintiff's claims are brought in bad faith to prevent
19 legitimate competition.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are Unenforceable and barred by the Doctrine of Misuse.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 Plaintiff's claims for damages are barred to the extent that Plaintiff failed to
24 comply with the marking requirements of 35 U.S.C. § 287(a).

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's claims are barred, in whole or in part, because Defendant SGPP's
27 actions were based on good, sufficient, and legal cause, upon reasonable grounds

for belief in their justification, and were taken in good faith and without malice or ill will for Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Trade Secret Misappropriation claims are barred, in whole or in part, because the subject matter of the alleged trade secrets do not derive independent economic value.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Trade Secret Misappropriation claims are barred, in whole or in part, because the subject matter of the alleged trade secrets are not subject of efforts reasonably calculated to maintain secrecy.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's Trade Secret Misappropriation claims are barred by the Doctrine of Independent Creation.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's Trade Secret Misappropriation claims are barred, in whole or in part, because knowledge, information, etc., constituting a trade secret was never imparted to, acquired by, or disclosed to Defendant SGPP or to Defendant Huang.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims arise from bad faith conduct of Plaintiff, and/or concerted bad faith conduct of Third Persons.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's Trade Secret Misappropriation claims are barred by Contract.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant SGPP is a beneficiary of Defendant Huang's full performance of any and all contractual, statutory, and other duties, if any, owing to Plaintiff, and said Plaintiff is without or otherwise estopped to assert any cause of action against Defendant SGPP.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff's Trade Secret Misappropriation claims are barred because the
3 subject matter of the alleged trade secrets are generally known to the public.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred because Plaintiff would be unjustly enriched if
6 Plaintiff were to prevail in this action.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 Plaintiff has not suffered any damages as a result of any action taken by
9 Defendant SGPP, Plaintiff is thus barred from asserting any cause of action against
10 Defendant SGPP.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 Plaintiff is not entitled to injunctive relief because any injury to the Plaintiff
13 is not immediate or irreparable, and the Plaintiff has an adequate remedy at law.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 Defendant SGPP is entitled to its attorneys' fees and costs pursuant to Cal.
16 Civ. Code § 3426.4, providing that if a claim of misappropriation is made in bad
17 faith, the Court may award reasonable attorneys' fees and costs to the prevailing
18 party.

19 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

20 Defendant SGPP is entitled to its attorneys' fees pursuant to Title 35 U.S.C. §
21 285, providing that upon a finding of an "exceptional" case, the Court may award
22 reasonable attorneys' fees to the prevailing party.

23 **THIRTIETH AFFIRMATIVE DEFENSE**

24 Defendant SGPP has insufficient knowledge or information on which to form
25 a belief as to whether it may have additional and as yet unstated affirmative defense
26 available. Therefore, Defendant SGPP reserves the right to assert such additional
27
28

defenses as are warranted in the event that the discovery indicates that such defenses would be appropriate.

**COUNTERCLAIMS OF COUNTER-CLAIM PLAINTIFF
SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION TO
COUNTER-CLAIM DEFENDANT BAL SEAL ENGINEERING
COMPANY, INC.**

For its counterclaim against Bal Seal Engineering Company, Inc. (“Bal Seal”), Saint-Gobain Performance Plastics Corporation (“SGPP”) states as follows:

1. SGPP is a Delaware corporation having a place of business at 7301
Orangewood Avenue, Garden Grove, California 92841.

2. Upon information and belief, Bal Seal is a California Corporation having a principal place of business at 19650 Pauling, Foothill Ranch, California 92610.

3. This Court has subject matter jurisdiction over the following Counterclaims pursuant to Title 28 U.S.C. §§ 1331, 1338(a) and 2201.

COUNT I
DECLARATORY JUDGMENT – NON-INFRINGEMENT

4. This is an action for Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,082,390 ("the '390 Patent").

5. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

6. Bal Seal alleges ownership of the '390 Patent.

7. Bal Seal brought this action and alleges SGPP is a direct and contributory infringer and has induced others to infringe the '390 Patent. There is an actual controversy between SGPP and Bal Seal.

⁸ SGPP did not and does not infringe the ‘390 Patent.

COUNT II
DECLARATORY JUDGMENT – PATENT INVALIDITY

9. This is an action for Declaratory Judgment for invalidity of the '390 Patent.

10. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

11. The ‘390 Patent is Invalid for failure to comply with the requirements of patentability as set forth in the patent statutes, including, but not limited to, Title 35 U.S.C. §§ 101, 102, 103, and 112.

COUNT III
DECLARATORY JUDGMENT – NON-INFRINGEMENT

12. This is an action for Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,160,122 (“the ‘122 Patent”).

13. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

14. Bal Seal alleges ownership of the '122 Patent.

15. Bal Seal brought this action and alleges SGPP is a direct and contributory infringer and has induced others to infringe the '122 Patent. There is an actual controversy between SGPP and Bal Seal.

16. SGPP did not and does not infringe the '122 Patent.

COUNT IV
DECLARATORY JUDGMENT – PATENT INVALIDITY

17. This is an action for Declaratory Judgment for invalidity of the '122 Patent.

18. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

19. The ‘122 Patent is Invalid for failure to comply with the requirements of patentability as set forth in the patent statutes, including, but not limited to, Title 35 U.S.C. §§ 101, 102, 103, and 112.

COUNT V
DECLARATORY JUDGMENT – NON-INFRINGEMENT

20. This is an action for Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,984,316 (“the ‘316 Patent”).

21. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

22. Bal Seal alleges ownership of the '316 Patent.

23. Bal Seal brought this action and alleges SGPP is a direct and contributory infringer and has induced others to infringe the '316 Patent. There is an actual controversy between SGPP and Bal Seal.

24. SGPP did not and does not infringe the '316 Patent.

COUNT VI

DECLARATORY JUDGMENT – PATENT INVALIDITY

25. This is an action for Declaratory Judgment for invalidity of the '316 Patent.

26. Defendant SGPP hereby incorporates by reference its answers to the allegations contained in paragraphs 1 through 115 of the Amended Complaint as if set forth fully herein.

27. The ‘316 Patent is Invalid for failure to comply with the requirements of patentability as set forth in the patent statutes, including, but not limited to, Title 35 U.S.C. §§ 101, 102, 103, and 112.

PRAYER FOR RELIEF

WHEREFORE, SGPP requests judgment in its favor and against Plaintiff and Counterclaim Defendant as follows:

- A. That Bal Seal take nothing by way of its Amended Complaint and that its Amended Complaint be dismissed with prejudice;
- B. That the Court Declare that SGPP has not infringed any valid claim of the ‘390, ‘122, and ‘316 Patents;
- C. That the Court Declare that each of the claims of the ‘390, ‘122, and ‘316 Patents are Invalid;
- D. That the Court Declare this case “exceptional” under Title 35 U.S.C. § 285 and award SGPP its reasonable attorneys’ fees;
- E. That the Court Declare Bal Seal’s Trade Secret Misappropriation Claims have been made in “bad faith”, and award reasonable attorneys’ fees and costs to SGPP, pursuant to Cal. Civ. Code § 3426.4;
- F. That the Court Award SGPP its costs incurred herein; and
- G. That the Court Award SGPP such further relief as the Court deems just and proper.

1 Dated: July 21, 2010

PEPPER HAMILTON LLP

3 By:/s/ Harry P. "Hap" Weitzel

4 Harry P. "Hap" Weitzel (Cal. Bar
5 No. 149934)
6 PEPPER HAMILTON LLP
7 4 Park Plaza, Suite 1200
Irvine, California 92614
Telephone: 949.567.3500
Fax: 949.863.0151
Email: weitzelh@pepperlaw.com

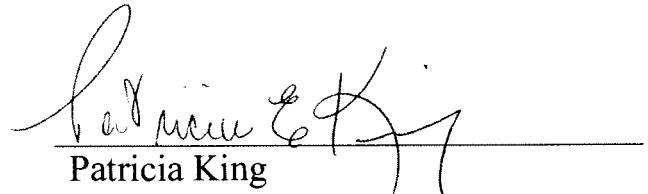
10 M. Kelly Tillery*
11 Erik N. Videlock*
12 Christopher D. Olszyk, Jr.*
13 PEPPER HAMILTON LLP
14 3000 Two Logan Square
15 Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
Telephone: (215) 981-4000
Fax: (215) 981-4750
Email: tilleryk@pepperlaw.com,
videlocke@pepperlaw.com, and
olszykc@pepperlaw.com

16 * Admitted Pro Hac Vice

17
18
19 *Counsel for Defendant Jay Quiang*
20 *Huang and Defendant/Counterclaim*
21 *Plaintiff Saint-Gobain Performance*
22 *Plastics Corporation*

1 **CERTIFICATE OF SERVICE**
2
3
4
5
6
7
8
9

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this 21st, day of July, 2010.

10
11 
12 Patricia King
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28